IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

WP(C).No. 20610 of 2003(S)
---

PETITIONER:
---

1. UNION OF INDIA, REPRESENTED BY
SECRETARY TO THE GOVERNMENT OF INDIA,
DEPARTMENT OF TELECOMMUNICATIONS, MINISTRY TO
COMMUNICATIONS, NEW DELHI.

2. THE CHAIRMAN-CUM-MANAGING DIRECTOR,
BHARAT SANCHAR NIGAM LIMITED,
SANCHAR BHAVAN, NEW DELHI.

3. THE CHIEF GENERAL MANAGER
TELECOMMUNICATIONS, KERALA CIRCLE,
TRIVANDRUM.

4. PRINCIPAL GENERAL MANAGER, TELECOM
ERNAKULAM TELEPHONES, ERNAKULAM.

BY ADV. SRI.P.VIJAYAKUMAR

RESPONDENTS:
---

1. T.S.GOPI, S/O.T.P.SANKUNNY,
DIVISIONAL ENGINEER TELECOM, BSNL, NARAKKAL
(RTD), RESIDING AT 'THACHANGAT HOUSE',
EDAVANAKKAD, COCHIN.

2. THE HON'BLE CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH, REPRESENTED
BY ITS REGISTRAR.

BY ADV. SRI.M.A.SHAFIK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1-TRUE COPY OF OA 32/2003 WITH ANNEXURES

EXT.P2-TRUE COPY OF THE REPLY STATEMENT FILED BY PETITIONERS IN OA 32/2003

EXT.P3-TRUE COPY OF THE ADDITIONAL REPLY STATEMENT FILED BY FIRST RESPONDENT IN OA 32/2003

EXT.P4-TRUE COPY OF THE ADDITIONAL REPLY STATEMENT FILED BY THE PETITIONERS

EXT.P5-TRUE COPY OF THE ORDER DATED 27.3.2003 IN OA 32/2003 PASSED BY R2

EXT.P6-TRUE COPY OF THE REPRESENTATION DATED 3/7/2005

EXT.P7-TRUE COPY OF THE LETTER DATED 10.7.2005

EXT.P8-TRUE COPY OF THE ORDER DATED 24.4.2006 ISSUED BY CGMT

RESPONDENTS' EXTS:

EXT.R1(A)-TRUE COPY OF LETTER DATED 14.8.85 ISSUED BY GOVT. OF INDIA, MINISTRY OF SHIPPING AND TRANSPORT

EXT.R1(B)-TRUE COPY OF THE RELEVANT PAGES OF THE PENSION BOOK OF FIRST RESPLNDENT.

EXT.R1(C)-TRUE COPY OF TERMS AND CONDITIONS OF GREF STAFF DATED 20.11.1969 ISSUED BY MINISTRY OF SHIPPING AND TRANSPORT

// TRUE COPY //

P.S. TO JUDGE

**K. Balakrishnan Nair &**
**T.R. Ramachandran Nair, JJ.**

**- - - -

the stand of the petitioners herein in declining to reckon his past service in the GREF for pensionary benefits. According to the first respondent, the service rendered by him in GREF is military service and therefore the said service is liable to be reckoned for pensionary benefits under Rule 28 of the Central Civil Services (Pension) Rules.

3. The petitioners filed a reply statement admitting that the service of the first respondent in GREF is military service, but the said service cannot be reckoned for the reason that the break between his discharge from the GREF and his appointment in P & T Department is more than one year. Later, an additional reply statement was filed in which it was contended that the first respondent is not an ex-service man and therefore his service in the GREF cannot be treated as military service. On that ground, the petitioner's herein who were the respondents in the O.A., prayed for dismissal of the O.A.

4. The Tribunal, after hearing both sides, held that in the light of the Ministry of Home Affairs O.M. dated 26.10.1964, at the time of his discharge he was entitled to be treated as an ex-service man. His recruitment in the P & T Department is held to be under the ex-servicemen quota. Though there is an interruption between the two services for one year, it was held that in view of Rule 28 of the CCS Pension Rules, the service

rendered by him in the GREF is liable to be reckoned for the purpose of grant of pensionary benefits. The petitioners attack the said order of the Tribunal, a copy of which is marked as Ext.P5.

5. The following contentions were raised by the petitioners before this court: The service in the GREF cannot be treated as military service. There is a break of more than one year and therefore the provisions of Rule 19 are applicable. Rule 28 will be applicable if only the service rendered by him in the GREF is a regular or substantive service. An officer holding Short Service Commission in the GREF cannot be treated as a person holding a substantive or regular post.

6. We heard learned counsel for the first respondent also.

7. Though service under the GREF may not be Military service in the strict sense, going by the relevant rules/orders in force at the time of discharge of the first respondent from the GREF, he was liable to be treated as an ex-serviceman and therefore his service is liable to be counted as military service for employment purposes. The O.M. relied on by the petitioners, issued in 1979 which is produced as Annexure R1 before the Tribunal, cannot have any retrospective application or take away the rights enjoyed by the first respondent at the relevant time of his discharge and re-employment. So, the view taken by the Tribunal in this regard is a fair and

reasonable view on the facts and materials on record. The same cannot be described as perverse warranting interference by us under Article 226/227 of the Constitution of India. The Tribunal did not rely on Rule 19, but relied on Rule 28. So, we need not go into the contentions raised by the petitioners relying on Rule 19. Rule 28 of the CCS Pension reads as follows:

> "In the absence of a specific indication to the contrary in the service book, an interruption between two spells of civil service rendered by a Government servant under Government including civil service rendered and paid out of Defence Services Estimates or Railway Estimates shall be treated as automatically condoned and the pre-interruption service treated as qualifying service."

Going by the decision of the Apex Court in **R. Viswan and others v. Union of India and others** ((1983) 3 SCC 401), though in relation to discipline, the Military laws are applicable, in relation to service matters, the Central Civil Services (Classification, Control & Appeal) Rules, 1965 are applicable to the employees under the GREF. They are civilian employees, payments for whom are made from Defence Estimates. So, the service in GREF is definitely a civil service. So, we are of the view that Rule 28 of the CCS Pension Rules will apply in their case. But learned counsel for the petitioners submitted that service of the petitioner under the GREF being in the capacity of Short Service Commissioned Officer, he cannot be treated as

a regular employee. On the contrary, he should be treated as a temporary or ad hoc employee. We are of the view that the said contention is made without any materials on record or supported by any pleadings before the Tribunal. Short Service Commissioned Officers are appointed for a period. The same will not make the service rendered by them not a regular service under the Union of India. It will definitely be regular service, as the term is understood in service parlance. Therefore, the contention of the petitioners in that regard cannot be accepted.

In view of the above position, the writ petition fails and it is dismissed.

**(K. Balakrishnan Nair, Judge.)**

**(T.R. Ramachandran Nair, Judge.)**

**kav/**

**K. Balakrishnan Nair &**
**T.R. Ramachandran Nair, JJ.**
**- - - - - - - - - - - - - - - - - - - - -**
**W.P.(C).NO.20610 of 2003-S**
**- - - - - - - - - - - - - - - - - - - - - - - - -**

**JUDGMENT**

**29th day of October, 2007**